

ASSEMBLY BILL

No. 1587

Introduced by Assembly Member Scott

February 26, 1999

An act to amend Section 12281 of the Penal Code, relating to firearms, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1587, as introduced, Scott. Firearms: SKS rifles.

Existing law grants immunity from criminal prosecution to any person, firm, company, or corporation that is subject to prosecution under the provisions of law governing assault weapons for conduct related to an SKS rifle, as defined, committed during a specified period in which there were conflicting administrative designations of that weapon, and also provides that the designated SKS rifles are not subject to seizure by law enforcement for violation of specified assault weapons provisions prior to January 1, 2000.

This bill instead would require that these designated rifles be subject to being taken into custody by a law enforcement officer in the ordinary course of performing his or her duties. The bill would provide that if the weapon is taken into custody prior to January 1, 2000, the person, firm, company, or corporation from whom it was taken, after providing proof as required in the above provisions to the county prosecutor, shall not be prosecuted under the above provisions, and would require the person, firm, company, or corporation to be compensated for the weapon, as specified, or to have the

weapon returned for disposal, as specified. By imposing a higher level of service upon a local agency, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12281 of the Penal Code is
2 amended to read:

3 12281. (a) Any person who, or firm, company, or
4 corporation that, operated a retail or other commercial
5 firm, company, or corporation, and manufactured,
6 distributed, transported, imported, possessed, possessed
7 for sale, offered for sale, or transferred, for commercial
8 purpose, an SKS rifle in California between January 1,
9 1992, and December 19, 1997, shall be immune from
10 criminal prosecution under Section 12280. The immunity
11 provided in this subdivision shall apply retroactively to
12 any person who, or firm, company, or corporation that, is
13 or was charged by complaint or indictment with a
14 violation of Section 12280 for conduct related to an SKS
15 rifle, whether or not the case of that person, firm,
16 company, or corporation is final.

17 (b) Any person who possessed, gave, loaned, or
18 transferred an SKS rifle in California between January 1,
19 1992, and December 19, 1997, shall be immune from



1 criminal prosecution under Section 12280. The immunity
2 provided in this subdivision shall apply retroactively to
3 any person who was charged by complaint or indictment
4 with a violation of Section 12280 for conduct related to an
5 SKS rifle, whether or not the case of that person is final.

6 (c) Any SKS rifle in the possession of any person who,
7 or firm, company, or corporation that, is described in
8 subdivision (a) or (b), shall ~~not~~ be subject to ~~seizure~~
9 *being taken into custody by a law enforcement for*
10 *violation of Section 12280 officer in the ordinary course of*
11 *performing his or her duties. If the SKS rifle is taken into*
12 *custody prior to January 1, 2000, the person, firm,*
13 *company, or corporation from whom it was taken, after*
14 *providing proof as required in this section to the county*
15 *prosecutor, shall not be prosecuted for violation of*
16 *Section 12280 and shall be compensated for the weapon*
17 *as if it had been relinquished in accordance with*
18 *paragraph (1) of subdivision (f) or shall have the weapon*
19 *returned to be disposed of in accordance with paragraph*
20 *(1) of subdivision (f).*

21 (d) Any person, firm, company, or corporation,
22 convicted under Section 12280 for conduct relating to an
23 SKS rifle, shall be permitted to withdraw his or her plea
24 of guilty or nolo contendere, or to reopen his or her case
25 and assert the immunities provided in this section, if the
26 court determines that the allowance of the immunity is
27 in the interests of justice. The court shall interpret this
28 section liberally to the benefit of the defendant.

29 (e) The Department of Justice shall notify all district
30 attorneys on or before January 31, 1999, of the provisions
31 of this section. The department shall identify all criminal
32 prosecutions in the state for conduct related to SKS rifles
33 within 90 days of the effective date of this section. In all
34 cases so identified by the Attorney General, the district
35 attorneys shall inform defense counsel, or the defendant
36 if the defendant is in propria persona, in writing, of the
37 provisions of this section within 120 days of the effective
38 date of this section.

1 (f) (1) Any person, firm, company, or corporation
2 that is in possession of an SKS rifle shall do one of the
3 following on or before January 1, 2000:

4 (A) Relinquish the SKS rifle to the Department of
5 Justice pursuant to subdivision (h).

6 (B) Relinquish the SKS rifle to a law enforcement
7 agency pursuant to Section 12288.

8 (C) Dispose of the SKS rifle as permitted by Section
9 12285.

10 (2) Any person who has obtained title to an SKS rifle
11 by bequest or intestate succession shall be required to
12 comply with subparagraph (A) or (B) of paragraph (1)
13 of this subdivision unless he or she otherwise complies
14 with paragraph (1) of subdivision (b) of Section 12285.

15 (3) Any SKS rifle relinquished to the department
16 pursuant to this subdivision shall be in a manner
17 prescribed by the department.

18 (4) The department shall conduct a public education
19 and notification program as described in Section 12289,
20 commencing no later than January 1, 1999.

21 (g) Any person who complies with subdivision (f) shall
22 be exempt from the prohibitions set forth in subdivision
23 (a) or (b) of Section 12280 for those acts by that person
24 associated with complying with the requirements of
25 subdivision (f).

26 (h) (1) The department shall purchase any SKS rifle
27 relinquished pursuant to subdivision (f) from funds
28 appropriated for this purpose by the act amending this
29 section in the 1997–98 Regular Session of the Legislature
30 or by subsequent budget acts or other legislation. The
31 department shall adopt regulations for this purchase
32 program that include, but are not limited to, the manner
33 of delivery, the reimbursement to be paid, and the
34 manner in which persons shall be informed of the state
35 purchase program.

36 (2) Any person who relinquished possession of an SKS
37 rifle to a law enforcement agency pursuant to Section
38 12288 prior to the effective date of the purchase program
39 set forth in paragraph (1) shall be eligible to be
40 reimbursed from the purchase program. The procedures

1 for reimbursement pursuant to this paragraph shall be
2 part of the regulations adopted by the department
3 pursuant to paragraph (1).

4 (i) Notwithstanding paragraph (11) of subdivision (a)
5 of Section 12276, an “SKS rifle” under this section means
6 all SKS rifles commonly referred to as “SKS Sporter”
7 versions, manufactured to accept a detachable AK-47
8 magazine and imported into this state and sold by a
9 licensed gun dealer, or otherwise lawfully possessed in
10 this state by a resident of this state who is not a licensed
11 gun dealer, between January 1, 1992, and December 19,
12 1997.

13 (j) Failure to comply with subdivision (f) is a public
14 offense punishable by imprisonment in the state prison,
15 or in a county jail, not exceeding one year.

16 (k) In addition to the regulations required pursuant to
17 subdivision (h), emergency regulations for the purchase
18 program described in subdivision (h) shall be adopted
19 pursuant to Chapter 3.5 (commencing with Section
20 11340) of Part 1 of Division 3 of Title 2 of the Government
21 Code.

22 SEC. 2. Notwithstanding Section 17610 of the
23 Government Code, if the Commission on State Mandates
24 determines that this act contains costs mandated by the
25 state, reimbursement to local agencies and school
26 districts for those costs shall be made pursuant to Part 7
27 (commencing with Section 17500) of Division 4 of Title
28 2 of the Government Code. If the statewide cost of the
29 claim for reimbursement does not exceed one million
30 dollars (\$1,000,000), reimbursement shall be made from
31 the State Mandates Claims Fund.

32 SEC. 3. This act is an urgency statute necessary for the
33 immediate preservation of the public peace, health, or
34 safety within the meaning of Article IV of the
35 Constitution and shall go into immediate effect. The facts
36 constituting the necessity are:

37 In order to authorize law enforcement officers to take
38 SKS rifles into custody in the ordinary course of

- 1 performing their duties at the earliest possible time, it is
- 2 necessary that this act take effect immediately.

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